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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,175	12/26/2001	William J. Drasler		6071

7590 11/14/2003
William J. Drasler
4100 Dynasty Drive
Minnetonka, MN 55345

EXAMINER

THALER, MICHAEL H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 11/14/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,175

Applicant(s)

DRASLER ET AL.

Examiner

Michael Thaler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 65-91 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 65-91 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Sep. 27, 2003 has been entered.

Claim 87 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 65 indicates that the axial structural stands are not part of the claimed combination, noting the phrase "adapted to allow" in line 14. However, claim 87, which depends from claim 65, implies that the axial structural stands are part of the claimed combination, making the scope of the claim unclear.

Claims 65-91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polansky (3,304,557). Polansky shows flexible strands 13 having axial componentry interwoven with flexible strands 14 having circumferential componentry and circumferential structural strands (some of the strands 14) wherein any one of said flexible strands having circumferential componentry is replaced by one of

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said circumferential structural strands. Some of the strands 14 may be considered to be "structural strands" as claimed since they provide a structural component to the prosthesis. The Polansky specification fails to specifically indicate that the structure will not significantly leak blood serum or blood cellular elements. However, Polansky does teach that the structure may be used as an artificial artery or vein (col. 1, line 58). It would have been obvious that a structure which performs this function would not significantly leak blood serum or blood cellular elements since a significant leak would destroy the intended function of conveying the blood. As to claim 69, Polansky fails to disclose a bifurcated member. However, it is well known in this art to make arterial grafts bifurcated in order to conduct blood to two arterial branches. Making the Polansky tubular member bifurcated so that it also could perform this function would have been obvious. As to claim 75, Polansky fails to disclose the structural strands as being metal. However, it, is well known in this art to use metal as a material for grafts since it is very strong. Using metal as the material for structural strands of Polansky would have been obvious for this reason. As to claim 87, the Polansky structural strands 15 or 16 which form the helix portion of the alternating rings and helix described in col. 5, lines 66-69 extend in an axial

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(as well as circumferential) direction. As to claims 90 and 91, Polansky fails to disclose the structural strands extending beyond an end of the tubular member to be attached to an attachment means. However, it is well known in this art to so construct attachment means on vascular grafts in order to provide a strong attachment between the graft and blood vessel. It would have been obvious to so construct the Polansky vascular graft so that it too would have this advantage. The above well-known in the art statements are taken to be admitted prior art because applicant failed to traverse the examiner's assertions (M.P.E.P. 2177.03).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9306 for regular communications and (703)872-9306 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht
November 12, 2003



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731